# SUPREME COURT OF KENTUCKY

2002-SC- 0369-D

(2002-CA-0200)

JANE GROSS — MOVANT

V — FAYETTE CIRCUIT COURT

NO. 2001-XX-0060

FRED IRTZ, ADMINISTRATOR
ESTATE OF CALEB P. GROSS — RESPONDENT

**ORDER**

The motion to intervene by Eugene Gross is denied.

The motion for review of the decision of the Court of Appeals is denied.

Respondent Irtz's request for damages and Rule 11 sanctions is denied.

Keller, J., not sitting.

ENTERED June 4, 2003.

_____

Chief Justice
Joe Lambert

**COMMONWEALTH OF KENTUCKY**
**COURT OF APPEALS**

No. 2002-CA-000200-D

JANE GROSS — MOVANT

V. ON MOTION FOR DISCRETIONARY REVIEW
FROM FAYETTE CIRCUIT COURT
01-XX-00060

FRED IRTZ, ATTORNEY — RESPONDENT

**********

**ORDER DENYING DISCRETIONARY REVIEW**

BEFORE: GUDGEL, CHIEF JUDGE; BARBER AND TACKETT, JUDGES

Having considered the motion for discretionary review and the response thereto, and being sufficiently advised, the court ORDERS the motion be DENIED.

ENTERED: APR 11 2002

JUDGE, COURT OF APPEALS

**FAYETTE CIRCUIT COURT**
**APPEAL BRANCH**
**FOURTH DIVISION**

**IN RE: THE ESTATE OF CALEB POWERS GROSS**
**DECEDENT**

**Appeal from District Court**
**No. 91-P-1247** **NO. 01-XX-60**

**ORDER**

**********

The Appellee, The Estate of Caleb P. Gross, through its representative Frederick G. Irtz, II, Administrator with Will Annexed, moves the Court to dismiss an appeal by Jane Gross.

Jane Gross had appealed orders of the Fayette District Court, the Honorable Kevin Horne, presiding, relative to the execution of a waiver in exchange for distribution under the estate.

The Court, on Friday, December 28, 2001, heard arguments of counsel for the estate as well as Jane Gross, pro se. Considering the content of those arguments and the respective pleadings filed to date, which include Statement of Appeal from the Appellant, Jane Gross, and the Motion to Dismiss by the estate, IT IS HEREBY ORDERED that this appeal be DISMISSED.

It is quite evident from the record that Jane Gross, by her own admission received the monetary compensation that she was entitled to, including eight percent interest from one year from the probate of the Will through the date of the payment. Actually, the date of payment does not coincide with

the tendered date payment by Mr. Irtz, Administrator with Will Annexed, but Judge Horne addressed that issue, and the court finds no abuse of discretion in his denial of additional interest since the Appellant refused the tender of the full amount due and owing at that time.

The Appellant mistakes interest at twelve percent allowed on a judgment with her entitlement to twelve percent on an order entered on February of 2001 by Judge Horne.

For the foregoing reasons, the appeal is DISMISSED on motion of the estate.

_____

JUDGE, FAYETTE CIRCUIT COURT

Attested copies to:
Judge Kevin Horne
Hon. Robert Monk
Mr. Willard D. Gross
Hon. Thomas Burnett
Mr. Eugene Gross
Ms. Lillian A.Gross Feghali
Ms. Jane LeMay Gross

On this 3rd day of January, 2002

WILMA F. LYNCH, C.F.C.C.
BY_____D.C.

**COMMONWEALTH OF KENTUCKY**
**FAYETTE DISTRICT COURT**
**PROBATE DIVISION**
**CASE NO: 91-P-1247**

**IN RE: THE ESTATE OF CALEB POWERS GROSS, DECENT**

**ORDER**

**********

This matter having come before the Court upon the Motion of the Counsel for the grandchildren as specific legatees, William W. Gross, Jane L. Gross, Caleb P. Gross II, and Willard D. Gross II, for direction as to the execution of a Receipt of Share and Waiver document; and there being present before the Court, the Hon. Steven A. Wides for and on behalf of the above named legatees, Willard D. Gross, Hon. Frederick G. Irtz, II, the Administrator and Hon. Robert Monk, counsel for Administrator, and the Court having heard argument of counsel, **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

1. That the specific legatees, represented by Hon. Steven Wides, to wit: William W. Gross, Willard D. Gross II, Jane L. Gross, and Caleb P. Gross II, are hereby directed to sign the Receipt of Share and Waiver document within ten (10) days from the date hereof.

2. In the event the Receipt of Share and Waiver document is not executed within the time frame stated herein above, then Counsel for the above named specific legatees is

hereby directed to return the money to the administrator, Hon.Frederick G. Irtz, II, and for him to administer those funds as if they revert to the residuary clause of the Estate.

DATED this the 4th day of October, 2001.

_____

JUDGE, FAYETTE DISTRICT COURT

TO BE ENTERED

_____

HON. STEVEN A. WIDES

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 4th day of October, 2001.

Eugene Gross, P.O.Box 1304, Harlan, KY 40531
Lillian Feghali, P.O. Box 697, Caywood, KY 40815
Robert Monk 180 Prosperous Place Suite 100 Lexington, KY 40509
Hon. Steve Wides, 107 Church Street Suite 200, Lexington, KY 40507
Hon. Frederick G. Irtz, II, 111 W. Short Street, Lexington, KY 40507

Willard D. Gross, 6718 Russell Cave Road Lexington, KY 40511
Jane Gross,6718 Russell Cave Road Lexington, KY 40511
William Gross,6718 Russell Cave Road Lexington, KY 40511 Caleb Gross, 116 Dundee Drive, Lexington, KY 40517
Willard Gross, 1211 North Court, Lexington, KY 40505

_____

CLERK, FAYETTE DISTRICT COURT

**COMMONWEALTH OF KENTUCKY**
**COURT OF JUSTICE**
**FAYETTE DISTRICT COURT**
**PROBATE DIVISION**

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEASED

NO. 91 P 01247

**RECEIPT OF SHARE AND WAIVER**

I the undersigned, beneficiary of the Estate of Caleb P. Gross, Deceased and not being under disability, do hereby severally acknowledge that I have received two checks from Frederick G. Irtz, II Administrator, in the amounts of $4,091.67 and $13,087.66 which represent my entire cash distribution from the estate and that I am not entitled to an additional distribution from this estate, and hereby expressly waive the requirement of a formal settlement, as required by KRS 395.610, Frederick G. Irtz, II in his capacity as Administrator of said estate and request that the Administrator of said estate be permitted to file an informal settlement as it relates to me pursuant to KRS 395.605. I further waive any right to further proceed or participate in the administration of this estate including all required notices after this date.

I state that I have read the foregoing settlement, that the statements contained therein are true and that I have received a copy of same.

Jane Gross

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

Subscribed and sworn to before me by Jane Gross on Oct. 5, 2001.

NOTARY PUBLIC,
State at Large Kentucky
4-28-04

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
CASE NO. 91-P-1247

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

**MOTION**

**********

Comes the undersigned, STEVEN A. WIDES, as counsel for William Wallace Gross, Jane L. Gross, Caleb P. Gross, II and Willard Donald Gross, II, and respectfully requests the Court for direction and an Order as to execution of the attached Receipt of Share and Waiver documents.

In support hereof the undersigned states as follows:

1. That on or about April 2, 2001 an Order was entered herein providing that the above named specific legatees would receive interest on their bequest pursuant to Article III of the Last Will and Testament of Caleb Powers Gross, Decedent.

2. Thereafter on or about July 30, 2001 an Order was entered which specified the amount of money each specific legatee as nominated under Article III of the Last Will and Testament, would receive in cash, subject only to the offsets of sums previously paid to or on their behalf.

3. Subsequent to the entry of the Order, the Hon. Frederick G. Irtz II, as Administrator of the above named Estate did deliver to Counsel for the specific legatees their distributive shares along with a specific Receipt of Share and Waiver for each Beneficiary to execute.

4. After some discussion and concerns about the

wording thereof, the Administrator redrafted the "Receipt of Share and Waiver" documents and forwarded them to the undersigned Counsel for the Specific Legatees on or about August 20, 2001.

5. That the undersigned, after meeting his client, Jane Gross and her father, Willard Gross was appraised of her and her brother's hesitance in executing the attached Receipt of Share and Waiver document. The said document is attached hereto as Exhibit A.

WHEREFORE, the undersigned as counsel for and on behalf of the named beneficiaries, would respectfully request the Court as follows:

(a) For direction as to whether the beneficiaries are required to execute the attached Exhibit A prior to receiving their last distributed share.

RESPECTFULLY SUBMITTED

HON. STEVEN A.WIDES
107 CHURCH STREET
SUITE 200
LEXINGTON, KY 405007
(859) 231-9933

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 31 day of August 2001.

Hon. Frederick G. Irtz, II, 111 W. Short Street, Lexington, KY 40507

Hon. Robert Monk, 180 Prosperous Place, Suite 100, Lexington, KY 40509
Willard D. Gross, 6718 Russell Cave Road Lexington, KY 40511
Jane Gross,6718 Russell Cave Road Lexington, KY 40511
William Gross,6718 Russell Cave Road Lexington, KY 40511

_____
CLERK, FAYETTE DISTRICT COURT

**NOTICE**

All parties please take notice that the foregoing Motion will be heard on Wednesday October 3, 2001 at the hour of 8:30 am or as soon as counsel may be heard.

_____
Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT
CASE NO. 91-P-1247

**RESPONSE TO MOTION**

Comes Willard D. Gross, pro se and files his response to motion requesting the court for direction and an ORDER as to execution of share and waiver documents and states as follows:

On July 30, 2001 this court issued a final and appealable order in this case and on August 31, 2001 Attorney Steve Wides filed a motion for direction and an order this being 32 days after the final and appealable order was issued. This order did not contain anything about a share and waiver order.

This court lost jurisdiction in the case 10 days after issuing the final and appealable order. Nothing can be added or subtracted to this order.

Under Rule 59.05 Motion to alter or amend or vacate a judgment. A motion to alter or amend a judgement, or to vacate and enter a new one, shall be served no later than 10 days after entry of final judgment.

Under *Commonwealth V. Gross* No. 95-SC-773-DG Supreme Court of Kentucky October 24, 1996 rehearing denied January 30,1997 holds trial court acted beyond its jurisdictional authority in granting probation under KRS 439.265, in that the ten-day time limit under this Rule had

expired. *Commonwealth V. Gross* 936 S.W. 2d 85 (1996).

Relying on CR 59.05, the Commonwealth argues that the trial court lost jurisdiction to alter, amend or vacate the judgement after the expiration of ten days of its entry. *Silverburg V. Commonwealth,* Ky., 587 S.W. 2d 241 (1979); *McMurray V. Commonwealth* Ky. App., 682 S.W. 2d 794 (1985). In Silverburg, the court addressed whether the trial court could modify a one-year felony sentence to a sentence of ten months in a county jail, 38 days after the judgment of conviction had been entered. In holding the renewed sentence to be improper, the court stated.

The judgement and sentence on the perjury conviction was entered by the trial judge on May 11, 1976... The trial judge on June 21, 1976, entered an order modifying the perjury sentence.... Where the Criminal Rules do not provide a time, The Civil Rules shall apply. RCR. 1.10 CR 59.05 provides that a judgment may be altered, amended or vacated withing ten days after the entry of final judgment. The order June 21, 1976, was entered 38 days subsequent May 14, 1976 judgment. The court lost jurisdiction of the case and the entry of the order modifying the sentence are void.

Similarly, the Kentucky Court of Appeals reiterated this point in McMurray wherein the Court of Appeals held void renewed final sentence judgment wherein the trial court increased the sentence after discovering a prior criminal record of defendant previously disclosed. Not with standing the oversight, the Court of Appeals afforded the trial court no discretion of this issue and held that CR 59.05 barred the amended sentence.

WHEREFORE, under Rule 59.05 and the above law, Willard Gross moves the court to dismiss Attorney Wides motion for lack of jurisdiction.

Submitted by,

_____

Willard D. Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the26 day of September 2001.

Fayette District Court, Probate Division 136 MLK Blvd. Lexington KY 40507
Steve Wides, 107 Church St.,Lexington KY 40507
Robert Monk, 180 Prosperous Place, Suite 100, Lexington, KY 40509
Thomas Burnett, 156 Market St. Lexington, KY 40507
Eugene Gross, P.O. Box 1304, Harlan, KY 40831
Lillian Feghali, P.O. Box 697, Cawood KY 40815

_____

Willard D. Gross, pro se

COMMONWEALTH OF KENTUCKY
FAYETTE DISTIRCT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDEN
CASE NO. 91-P-01247

MOTION FOR PERIODIC ACCOUNTING

Comes Willard D. Gross, pro se son and heir of Caleb P. Gross and moves the court under KRS.395.610 to issue an order for the administrator to file a full and complete accounting of C.P. Gross' estate with the court and service to Willard D. Gross within 15 days.

Submitted by,

Willard D. Gross, pro se
6718 Russell Cave Road
Lexington, KY 40511

NOTICE AND CERTIFICATE

Please take the notice that the foregoing Motion will come on for a hearing on October 3,2001 at the hour of 8:30 am.

I hereby certify that a true copy of the foregoing instrument was served upon all persons listed by mailing a copy of same this the 26th day September,2001. Fayette District Court, Probate Division 136 MILK Blvd. Lexington, KY

Steven A. Wides, 107 Church St., Lexington, KY 40507
Robert Monk, 180 Prosperous Place Suite 100, Lexington, KY 40509
Thomas Burnett, 156 Market Street, Lexington, KY 40507
Eugene C. Gross, P.O. Box 1304, Harlan, KY 40831
Lillian A. Feghali, P.O. Box 697, Cawood, KY 40815

_____
Willard D. Gross, pro se

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION
CASE NO: 91-P-1247

IN RE THE ESTATE OF CALEB POWERS GROSS,
Decedent

**ORDER**

* *** * *** ***** * * *** ***** * * *** * **** * * * ** *

This matter having come before the Court upon the Granddaughter's Motion to enforce the Court's Order, and the Court having heard argument of the Administrator and counsel for the specific beneficiaries under Item III of the Last Will and Testament of Caleb Powers Gross, and being otherwise sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legatees as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive their specific bequest of$10,000.00 each, along with accrued interest thereon at the rate of 8% per annum not to be compounded annually.

2. That it is the order of this Court that there is enough cash funds in the estate presently, to have the Administrator, Hon. Frederick G. Irtz, II, immediately disburse, in cash, to the specific legatees under Article III in the above referenced Last Will and Testament, the total is $17,338.81 to each beneficiary,

except Caleb Gross, II, whose amount is $17,203.96, subject only to the offsets of sums previously paid to or on their behalf.

3. This is a final and appealable Order.

DATED this the 30 day of July, 2001.

JUDGE, FAYETTE DISTRICT COURT

HON. STEVEN A. WIDES

HON. THOMAS BURNETT

HON. ROBERT MONK

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been sent to the following on this the 30th day of July, 2001.

HON. STEVEN A. WIDES, 107 CHURCH STREET SUITE 200, LEXINGTON, KY 40507
EUGENE GROSS, P0 BOX 1304, HARLAN, KY 40831
LILLIAN FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

HON. ROBERT MONK, 180 PROSPEROUS PLACE, SUITE 100, LEXINGTON, KY 40509
WILLIAM W. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
HON. FREDERICK G. IRTZ, 11,111 W. SHORT STREET, LEXINGTON, KY 40507

_____
CLERK,FAYETTE DISTRICT COURT

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE THE ESTATE OF CALEB POWERS GROSS,
decedent
CASE NO: 91-P-01247

**ORDER**

**********

This matter having come before the Court upon the Motion of the Specific Legacies, by counsel, to receive interest on their specific bequest of $10,000.00 each, and the Court having heard argument of counsel, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legacies as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive interest at the rate of 8% per annum, not to be compounded annually, to be calculated as of one year after the date of Probate, pursuant to KRS 394.520.

DATED this the _____ day of February, 2001

_____
JUDGE, FAYETTE DISTRICT COURT

CC:
HON. STEVEN A. WIDES, 107 CHURCH STREET, SUITE 200, LEXINGTON, KY 40507
HON. ROBERT C. MONK, 111 W. SHORT STREET, LEXINGTON, KY 40507
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

WILLARD D. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
EUGENE C. GROSS, POB OX 1304, HARLAN, KY 40831
LILLIAN A. GROSS FEGHALI, P0 BOX 697, CAWOOD, KY 40815
DONNA FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. FREDERICK G. IRTZ, II, P0 BOX 22777, 111 W. SHORT STREET, LEXINGTON, KY 40522

_____

Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE THE ESTATE OF CALEB POWERS GROSS,
decedent
CASE NO: 91-P-01247

**ORDER**

**********

This matter having come before the Court upon the Motion of the Specific Legacies, by counsel, to receive interest on their specific bequest of $10,000.00 each, and the Court having heard argument of counsel, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That each of the specific legacies as nominated under Item III of the Last Will and Testament of Caleb P. Gross shall receive interest at the rate of 8% per annum, not to be compounded annually, to be calculated as of one year after the date of Probate, pursuant to KRS 394.520.

DATED this the _____ day of February, 2001

***FILED AND ENTERED APRIL 2, 2001***

_____
JUDGE, FAYETTE DISTRICT COURT

CC:
HON. STEVEN A. WIDES, 107 CHURCH STREET, SUITE 200, LEXINGTON, KY 40507
HON. ROBERT C. MONK, 111 W. SHORT STREET, LEXINGTON, KY 40507
HON. THOMAS BURNETT, 156 MARKET STREET, LEXINGTON, KY 40507

WILLARD D. GROSS, 6718 RUSSELL CAVE ROAD, LEXINGTON, KY 40511
EUGENE C. GROSS, POB OX 1304, HARLAN, KY 40831
LILLIAN A. GROSS FEGHALI, P0 BOX 697, CAWOOD, KY 40815
DONNA FEGHALI, P0 BOX 697, CAWOOD, KY 40815
HON. FREDERICK G. IRTZ, II, P0 BOX 22777, 111 W. SHORT STREET, LEXINGTON, KY 40522

_____
Steven A. Wides

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

CASE NO. 91-P-1247

**ORDER**

**********

The matter being on for a hearing April 9, 1997 for the court to appoint Successor Executor in above styled matter and the court having taken testimony;

IT IS HEREBY ORDERED that an independent third party be named in the interest of all beneficiaries. The court hereby appoints the Honorable Fred Irtz, Successor Executor. This is a final and appeal order.

This the 2nd day of May 1997.

JUDGE, FAYETTE DISTRICT COURT
JULIA K. TACKETT

COMMONWEALTH OF KENTUCKY
FAYETTE DISTRICT COURT
PROBATE DIVISION

IN RE: THE ESTATE OF CALEB POWERS GROSS, DECEDENT

CASE NO. 91-P-1247

**ORDER**

**********

Upon Motion of Willard Gross for recusation of Judge Julia Tackett, and the Court having considered all relevant factors presented by the parties, and it appearing at this time that said Judge would have a conflict of interest by presiding herein, and the Court being sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Judge Julia Tackett does hereby recuse herself from presiding over all matters pending in the Estate of CALEB POWERS GROSS, and is relieved of all further responsibility herein. It is further directed that this matter be assigned by the Clerk to Judge Kevin M. Horne, Division Two, Fayette District Court.

Dated this 5th day of May, 1998.

_____

Julia K. Tackett, Judge

# FIDUCIARY BOND

AOC-825 Doc. Code:BF
Rev. 11-95
Commonwealth of KY
Court of Justice
KRS 62.060, 395.130, 395.140,
454.180-185

Case No._____
Court-_____
County-_____

I n

Re:_____
(Address)

_____having been appointed to act as
(Name of Fiducuary)

_____by the order of_____

Court on the ____day of_____, 19____, the principal and surety do hereby covenant to and with the Commonwealth of Kentucky in the sum of $_____for the use and benefits of all parties of interest herein, and that the principal will faithfully perform and discharge all the duties of the aforesaid trust according to law.

Frederick Irtz
(Name of Principal)

111 W. Short Street
Lex. KY 40507
(Address)

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*For Hearing on September 24, 1997*
*Judge Tackett*
*MH*

A True copy
Attest Robert M. True, Clerk
Fayette Circuit Court

By Marilyn Trayler, Clerk

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Taken and subscribed before me this _____ day of _____, 19_____.

Carla Million
(Clerk)

Approved:_____
(Judge)

Robert C. Monk
(Name of Attorney)

111 W. Short St.
Lex. KY 40507

App. 29

**FIDUCIARY BOND**

AOC-825 Doc. Code:BF
Rev. 11-95
Commonwealth of KY
Court of Justice
KRS 62.060, 395.130, 395.140,
454.180-185

Case No. 91-P-01247
Court-District/Probate
County-Fayette

In Re: Estate of CALEB POWERS GROSS, deceased
Frederick G. Irtz, II having been appointed to act as Administrator by the order of Fayette District Court on the Retroactive 2nd day of May 1997, the principal and surety do hereby covenant to and with the Commonwealth of Kentucky in the sum of $* No funds received at this time, for the use and benefit of al parties of interest herein, and that the principal will faithfully perform and discharge all the duties of the aforesaid trust according to law.

Frederick G. Irtz, II
(Name of Principal)

111 W. Short St.
Lexington, KY 40507

Taken and subscribed before me this 2nd day of May , 1997.
Robert M. True,CFCC

By: Carla Million
(Clerk)

Approved: Julia K. Tackett
(Judge)

Robert C. Monk, Atty.

111 W. Short St.